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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANDREW S. AUSTIN,

Petitioner,

v.

RICHARD SUBIA, Warden,

Respondent.

C 07-5620 MHP (PR)

**ANSWER TO ORDER TO
SHOW CAUSE**

Respondent hereby provides this answer to the order to show cause why the petition for writ of habeas corpus should not be granted:

CUSTODY

Petitioner is lawfully in the custody of Richard Subia, Warden of Mule Creek State Prison in Ione, California, as the result of a conviction in Santa Clara County Superior Court case number CC467605. A jury found petitioner guilty of aggravated sexual assault of a child under 14 (Cal. Pen. Code, § 269), continuous sexual abuse of a child under 14 (Cal. Pen. Code, § 288.5(a)), and child

1 molestation (Cal. Pen. Code, § 288(a)). The trial court sentenced petitioner to state prison for 27
2 years to life.

4 **GENERAL AND SPECIFIC DENIALS**

5 Respondent denies that the state court's ruling was contrary to, or involved an
6 unreasonable application of, clearly established federal law, as determined by the United States
7 Supreme Court, or was based on an unreasonable determination of the facts in light of the evidence
8 presented in the state court proceedings. Respondent specifically denies that petitioner was denied
9 his right to due process for prosecutorial misconduct, his right to effective assistance of counsel
10 for his attorney's failure to seek a mistrial after the alleged misconduct, his rights to
11 confrontation and to present a defense because the trial court refused to allow cross-examination
12 of M. about being touched by another child, or that his conviction for aggravated sexual assault
13 was supported by insufficient evidence.

15 **PROCEDURAL ISSUES**

16 Petitioner exhausted his claims in state court. His petition is timely..

18 **LODGED DOCUMENTS**

19 Respondent has lodged concurrently with this answer the following exhibits: (1) the state
20 court Clerk's Transcript; (2) the state court Reporter's Transcript; (3) Appellant's Opening Brief;
21 (4) Respondent's Brief; (5) Appellant's Reply Brief; (6) the unpublished opinion of the California
22 Court of Appeal, Sixth Appellate District, filed July 27, 2006; (7) Petition for Review; (8) Denial
23 of Petition for Review. Respondent hereby incorporates by reference the accompanying
24 memorandum of points and authorities in support of this answer.

CONCLUSION

WHEREFORE, respondent respectfully submits that the petition for writ of habeas corpus should be denied.

Dated: May 22, 2008

Respectfully submitted,

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